



## **Agricultural Mediation Program**

Section 502 of the Agricultural Credit Act of 1987 (P.L. 100-233) authorized the Secretary of Agriculture to help States develop the Department of Agriculture's (USDA) Certified State Mediation Programs and participate in those programs. The Farm Service Agency (FSA) through the Advisory and Corporate Operations Staff administers the program.

State mediation programs assist agricultural producers, their creditors, and other persons directly affected by the actions of the USDA to resolve disputes, thereby reducing participants' costs associated with administrative appeals, litigation, and bankruptcy. The USDA Mediation Program gives farmers and ranchers a confidential way to work out distressed or delinquent loans.

Agricultural mediation is a way of settling disputes within a producer's own means. The program provides a neutral mediator who can sit down with the parties or work on the phone to resolve very problematic issues. Instead of years it can take for a case to filter through the courts, mediation generally takes only a few meetings to complete.

A critical feature of mediation is confidentiality in working out differences concerning farmers and ranchers' business operations. Mediation documents are not to be

used for any other legal action. This is one of the key requirements for State mediation certification. Confidentiality is the key to making mediation work.

### **Background**

The Agricultural Credit Act of 1987 authorized an appropriation of \$7,500,000 for each of the fiscal years (FY) 1988 through 1991, with matching grants limited to the lesser of 50 percent or \$500,000 each year of the cost of any State program. Actual appropriations have been less than the authorization.

The Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624) extended this authority through FY 1995. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (P.L. 103-354) further extended this authority through FY 2000.

The Agriculture Credit Improvement Act of 1992 (P.L. 102-554) raised the matching grant level from 50 to 70 percent. Section 282 of the 1994 Reorganization Act expanded the program to include wetland determinations, conservation compliance, agricultural credit, rural water loan programs, grazing on national forest system lands, pesticides, and other issues the Secretary deems appropriate.

Section 275 of the Act required that if a USDA Certified State Mediation Program is available as part of the informal hearing process, the appeal participant will be offered mediation.

### **What is Mediation?**

Mediation is a process in which a trained, impartial person—a mediator—helps people look at their mutual problems, identify and consider options, and determine if they can agree on a solution. A mediator has no decisionmaking authority. Unlike a judge or an arbitrator, a mediator cannot decide what is right or “make” anyone do anything. Successful mediation is almost always based on the voluntary cooperation and participation of all the parties.

USDA enters mediation to explore all available options to help agricultural producers, their creditors, and other persons directly affected by the actions of USDA to resolve disputes and reduce costs associated with administrative appeals, litigation, and bankruptcy. USDA representatives try to set a positive, constructive tone and encourage others to do the same in order to provide a positive atmosphere for good settlements.

### **How Does Mediation Work?**

Mediation can be requested by any affected party at any time, but it usually takes place after a USDA official advises the USDA customer that mediation is available before formal adverse action. The customer may request mediation or waive the opportunity to use the service.

If mediation is requested, State mediation officials contact the requesting party to get a complete list of potential participants and their addresses and suggest steps the participants should take to prepare for mediation. The mediation service then assigns one or more mediators to the case.

Participants may select or eliminate the mediators offered by the mediation service. Once a mediator is selected, all potential participants are advised that a mediation process is underway. If a meeting is scheduled, the parties are informed of the time, place, and nature of the mediation process. Ground rules are set to ensure that the conference is productive.

Once an agreement is reached, the mediator makes sure that it is in writing, is signed, and made available to all participants. If an agreement is not reached, the case is closed, all parties are advised of the outcome, and all remain free to pursue other legal courses. Mediation does not favor one side or the other, but helps both consider their situation. The main idea is to provide a low-cost alternative to expensive, lengthy

litigation or bankruptcy.

### **Certification of State Mediation Programs**

FSA has a special procedure to help States develop mediation services. Under Federal Regulation 7 CFR 1946, FSA officials determine whether a State program meets the following requirements:

1. By August 1 of each year, the Governor or designated State agency head must notify the FSA Administrator of its interest in being certified and eligible to receive matching Federal support funds for the State mediation program.
2. Mediation services must be provided to agricultural producers, creditors, and other persons directly affected by USDA actions to help them reach mutually agreeable settlement of their disputes.
3. The program must be authorized or administered by an agency of the State government or by the Governor.
4. Training must be provided for mediators.
5. Confidentiality of the mediation process must be assured.
6. All lenders and borrowers of agricultural loans and, in cases of other issues covered by the mediation program, persons directly affected by USDA actions must be ensured of adequate notification of the mediation services available.

### **Matching State Grants**

If all the conditions are met, the FSA Administrator may certify a State's agricultural mediation program and provide matching funds for up to \$500,000 or 70 percent (whichever is less) of the operating and administrative costs of the program. These funds are to be used to pay the staff salaries, office expenses, supplies, training, travel, clerical support, and administrative costs necessary to provide mediation services.

Matching mediation grant funds are processed at the FSA national office by the Director, Advisory and Corporate Operations Staff. This delegation of authority was previously established with the former Farmers Home Administration. The purpose of this delegation was to provide a neutral source of authority separate from the loan making and servicing program staffs.

Grant funds are disbursed quarterly from the national office as States use their funds and request the matching funds. Checks are forwarded by certified mail along with the mediation work papers to the FSA State Executive Director (SED) for delivery to the State mediation officials.

**State Supplemental Mediation Agreement**

Once a State's agricultural mediation program is certified, the FSA SED jointly develops an agreement with the Governor's State mediation officials and other USDA participating agencies. The agreement will describe how the affected agencies will participate in the program. The FSA SED confers with the State Attorney General's office, all affected USDA agencies, farm organizations that are interested in development of the State's certified mediation program, and affected departments of State governments, to ensure that all interested parties have an opportunity to participate.

The agreement will contain the essentials of the State mediation structure, procedural guidelines, and forms to be used in the mediation process. Then it is reviewed by the Regional Office of the General Counsel and submitted to the national office for post approval by the FSA Administrator.

**National Performance**

The USDA Agricultural Mediation Program was cited for efficiency and effectiveness in the Vice President's Report of the National Performance Review, Creating a Government that Works Better and Costs Less. The program was singled out as an example of activity which other Federal agencies could use as a model.

The National Association of State Departments of Agriculture (NASDA) passed a resolution supporting the expansion of agricultural mediation. NASDA further urged the expansion of mediation to include other Federal agencies which play a role in land and resource management, including the Department of Interior and Army Corps of Engineers.

States participating in the program in 1998 are Alabama, Arizona, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

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